IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

WP(C).No. 32572 of 2007(C)

PETITIONER:

THE VANDIPERIYAR GRAMA PANCHAYAT,
REP. BY ITS SECRETARY, VANDIPERIYAR P.O.,
IDUKKI DISTRICT - 685 533.

BY ADV. SRI.JOICE GEORGE.

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY**
   ITS SECRETARY TO GOVERNMENT, DEPARTMENT OF HOME,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE SUPERINTENDENT OF POLICE,**
   OFFICE OF THE SUPERINTENDENT OF POLICE,
   PAINAVU P.O., IDUKKI DISTRICT.

3. **THE DEPUTY SUPERINTENDENT OF POLICE,**
   OFFICE OF THE DY. SUPERINTENDENT OF POLICE,
   KATTAPPANA P.O., IDUKKI DISTRICT.

4. **THE CIRCLE INSPECTOR OF POLICE,**
   OFFICE OF THE CIRCLE INSPECTOR OF POLICE,
   PEERUMEDU P.O., IDUKKI DISTRICT- 685531.

5. **THE SUB INSPECTOR OF POLICE,**
   VANDIPERIYAR POLICE STATION, VANDIPERIYAR P.O.,
   IDUKKI DISTRICT - 685 533.

6. **AMALRAJ, S/O. THANKAYYA, AGED ABOUT**
   38 YEARS, 57 TH MILE, VANDIPERIYAR P.O.,
   IDUKKI DISTRICT - 685 533.

W.P.(C). NO.32572/2007:

7. RAJAMMA, W/O. RAJAN, AGED 40 YEARS,
57 TH MILE, VANDIPERIYAR P.O., IDUKKI DISTRICT,
PIN-685 533.

8. MARIMUTHU, S/O. SUBBAYYAN, AGED 40 YRS,
57 TH MILE, VANDIPERIYAR P.O., IDUKKI DISTRICT,
PIN-685 533.

BY GOVERNMENT PLEADER SRI. SALIM.P.A,
ADV. SMT.A.K.PREETHA,
ADV. SRI.M.R.RAJESH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.32572/2007-C:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE MINUTES OF THE ALL PARTY MEETING CONVENED ON 25/09/2007.

EXT.P.2: COPY OF THE RESOLUTION NO.1 DTD. 17/10/2007.

EXT.P.3: COPY OF THE REQUEST DTD. 22/10/2007 SUBMITTED BY THE PETITIONER BEFORE THE R.5.

EXT.P.4: COPY OF THE RECEIPT DTD.25/10/2005 ISSUED BY THE R.5. TO THE PETITIONER EVIDENCING THE ACCEPTANCE OF EXT.P.3.

EXT.P.5: COPY OF THE COMMUNICATION DTD. 18/10/2007 SUBMITTED BY THE HEALTH INSPECTOR OF THE COMMUNITY HEALTH CENTER, VANDIPERIYAR TO THE SECRETARY OF THE PETITIONER PANCHAYAT.

EXT.P.6: COPY OF THE REQUEST SUBMITTED BY THE PRESIDENT OF THE PETITIONER PANCHAYAT TO THE DISTRICT COLLECTOR, IDUKKI DTD.27/10/2007.

RESPONDENT'S EXHIBITS:

EXT.R6.A: COPY OF THE CERTIFICATE ISSUED BY THE VILLAGE OFFICER, PEERMADE TO THE R.8. DTD. 11/12/2000.

EXT.R6.B: COPY OF THE CERTIFICATE ISSUED BY THE PETITIONER PANCHAYAT TO SMT. PUSHPALLY, W/O. PURUSHOTAMAN, A RESIDENT OF THE COLONY DTD. 13/04/2007.

EXT.R6.C: COPY OF THE REPRESENTATION SUBMITTED BY THE RESIDENTS OF THE COLONY TO THE PETITIONER PANCHAYATH DTD. NIL.

EXT.R6.D: COPY OF THE NEWSPAPER REPORT PUBLISHED IN MATHRUBHOOMI DAILY DTD. 12/10/2007.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR & K.P.BALACHANDRAN, JJ.

Writ Petition (C) No.32572 of 2007-C

Judgment

Balakrishnan Nair, J.

The petitioner is a grama panchayat. It is seeking protection against the obstruction offered by respondents 6 to 8 and others to the dumping of waste done by it in a revenue puramboke at Kazhuthapetta. The panchayat claims, for the last 30 years, it has been dumping waste in the said plot of land at Kazhuthapetta. Recently, a few persons have encroached into the said property and are residing there. Now, they are causing obstruction to the dumping of waste in the said plot. The panchayat has made arrangement for waste disposal in a plot of land at Pashumala and it may take some time for the said arrangement to be completed. Pending the said arrangement, the present system of disposal of waste in Kazhuthapetta has to be continued. Since the local people are causing obstruction, the Police was moved by filing Ext.P3 representation. Since no assistance was rendered by the Police, the District Collector was also addressed by Ext.P6 representation. Thereafter, this Writ Petition is filed, seeking the following reliefs :

"a. to issue a writ of mandamus or any other appropriate writ, order or direction, directing respondents 2 to 5 to give adequate and necessary police assistances and protection to the employees of the petitioner grama panchayat for disposing the solid wastes and garbages in the vacant land at Kazhuthapetta of 57th mile within the jurisdiction of the petitioner grama panchayat.

b. to declare that the respondents 6 to 8 and the men under them have no right or authority to obstruct the employees of the petitioner grama panchayat from disposing the solid wastes and garbages in the vacant land at Kazhuthapetta of 57th mile within the jurisdiction of the petitioner grama panchayat."

2. The 6th respondent has filed a counter affidavit, resisting the prayers in the Writ Petition. He submits, 60 families are residing in Kazhuthapetta. Majority of the residents belong to Scheduled Castes and they are included among persons 'below poverty line'. It is pointed out that earlier, those persons were settled in Vandiperiyar town. The panchayat evicted them and settled them in Kazhuthapetta by allotting 3-5 cents of land to them. The land in question is a revenue puramboke and the panchayat has no matter of right to dump waste in

the said plot at Kazhuthapetta. The actions of the panchayat are in violation of various provisions of the Kerala Panchayat Raj Act, 1994. Special reference is made to Sections 219E, 219N and 219Q of the said Act. It is also submitted that the solid waste is dumped by the side of the National Highway 220, which is an offence, punishable under the Act. The dumping of waste in open space is polluting the atmosphere. The drinking water is also polluted. Under the Municipal Solid Waste (Management & Handling) Rules, which are made applicable to the grama panchayat also, the activities of the panchayat mentioned above are prohibited. The 6th respondent therefore, prays for dismissal of the Writ Petition.

3. A statement has been filed on behalf of the 5th respondent. It is submitted that not only respondents 6 to 8, but all the people in the area are objecting to the dumping of waste in the above said plot at Kazhuthapetta. The said plot is adjacent to the National Highway and it is by the side of a canal, which leads to Periyar river. The dumping of waste is polluting the water. All the local people, including the merchants association, protested against the dumping of waste in the above said plot. In an all party meeting held on 25.09.2007, the panchayat undertook that they will not dump waste in the

disputed plot from 15.10.2007. The Police also points out that the panchayat is dumping waste in the area without getting the necessary clearance from the statutory authorities such as Pollution Control Board etc. The dumping of waste, without making necessary arrangements to avoid pollution in the area, cannot be allowed and therefore, protection cannot be granted to the panchayat, it is submitted.

4. The petitioner has filed a reply affidavit to the statement filed by the 5th respondent and also meeting the contentions raised in the counter affidavit filed by the 6th respondent. It is submitted that the panchayat is disposing the solid waste and garbage, using bleaching powder and other permissible chemicals. The contention raised by it in the Writ Petition that it has been dumping waste in the disputed plot since 1980, is reiterated in the reply affidavit. The panchayat denies the allegations of the 5th respondent and claims police protection to do the dumping of waste in the above said plot.

5. Heard the learned counsel on both sides. From the materials on record, it is evident that the panchayat is not disposing the waste scientifically. It does not have a case that it has got the clearance from the District Medical Officer or from the Pollution Control Board for the disposal of waste in the

present plot. In a most unscientific and primitive manner, the waste is brought and dumped in a puramboke land by the side of the National Highway and also a stream, leading to river Periyar. We have no doubt in our mind that the Police do not owe any duty to help the panchayat to continue the above said illegal activity. Therefore, we are not justified in asking the Police to grant protection to the panchayat. In this jurisdiction, we are concerned, only with the failure of duty from the part of the Police. In the result, the Writ Petition fails and it is dismissed. But, if the panchayat makes arrangement for scientific disposal of the waste with the concurrence of the statutory authorities like District Medical Officer, Pollution Control Board etc., it can move the Police for assistance. The dismissal of this Writ Petition will not affect the rights of the panchayat in this regard.

K.BALAKRISHNAN NAIR,JUDGE

13.11.2007 **K.P.BALACHANDRAN, JUDGE**

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